IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PIVITAL IP LLC, Plaintiff, v. **TWILIO INC.,** Defendant.	C.A. NO. _____ **JURY TRIAL DEMANDED** **PATENT CASE**

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Pivital IP LLC files this Original Complaint for Patent Infringement against Twilio Inc., and would respectfully show the Court as follows:

I. THE PARTIES

1. Plaintiff Pivital IP LLC ("Pivital" or "Plaintiff") is a Texas limited liability company having an address at 15922 Eldorado Pkwy, Ste 500-1699, Frisco, TX 75035.

2. On information and belief, Defendant Twilio Inc. ("Defendant") is a corporation organized and existing under the laws of Delaware, with a place of business at 375 Beale Street, Suite 300, San Francisco CA 94105. Defendant has a registered agent at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction of such action under 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Delaware Long-Arm Statute, due at least to its business in this forum, including at least a portion of the infringements alleged

herein. Furthermore, Defendant is subject to this Court's specific and general personal jurisdiction because Defendant is a Delaware corporation.

5. Without limitation, on information and belief, within this state, Defendant has used the patented inventions thereby committing, and continuing to commit, acts of patent infringement alleged herein. In addition, on information and belief, Defendant has derived revenues from its infringing acts occurring within Delaware. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in Delaware. Further, on information and belief, Defendant is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within Delaware. Defendant has committed such purposeful acts and/or transactions in Delaware such that it reasonably should know and expect that it could be haled into this Court as a consequence of such activity.

6. Venue is proper in this district under 28 U.S.C. § 1400(b). On information and belief, Defendant is incorporated in Delaware. On information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case.

7. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. § 1400(b).

III. COUNT I
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,636,965)

8. Plaintiff incorporates the above paragraphs herein by reference.

9. On October 21, 2003, United States Patent No. 6,636,965 ("the '965 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '965 Patent is titled "Embedding Recipient Specific Comments in Electronic Messages Using Encryption." A

true and correct copy of the '965 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. Pivital is the assignee of all right, title and interest in the '965 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the '965 Patent. Accordingly, Pivital possesses the exclusive right and standing to prosecute the present action for infringement of the '965 Patent by Defendant.

11. The application leading to the '965 patent was filed March 31, 1999. (Ex. A at cover).

12. The invention in the '965 Patent relates to the field of enhancements to electronic messaging system. (*Id.* at col. 1:7-10).

13. As e-mail was becoming the communication media of choice because it allows information to be disseminated rapidly to a number of recipients, it was difficult to create customized messages for particular recipients without generating each message individually. (*Id.* at col. 1:11-18). For example, using conventional methods, a company president wants to inform employees of a meeting to be held at a specific time and place and therefore drafts and sends an email message to be sent to all employees informing them of the meeting. (*Id.* at col. 1:18-22). The president may also want certain managers to be prepared to discuss particular items at the meeting but does not want all employees to know about this. (*Id.* at col. 1:22-25). In the past, to inform the managers separately, the president would have to create a separate message sent to each manager. (*Id.* at col. 1:25-28). To give the appearance that everyone gets the same message, the main message would be sent to everyone and then the message would be resent with comments to a smaller group, such as the managers. (*Id.* at col. 1:28-31). The method results in the message sender having to send the same message (with variations to different

distributions) multiple times and some recipients would be forced to spend unnecessary time opening and handling multiple messages. (*Id.* at col. 1:31-35). In order to communicate the main message to all employees and to provide additional information to selected group(s) of those employees, multiple message with different distribution lists would need to be created, sent and opened. (*Id.* at col. 1:35-39). This conventional methodology is not only inconvenient to the user, it creates bandwidth issues in some types of messaging systems on, for example, local area networks. (*Id.* at col. 1:39-42).

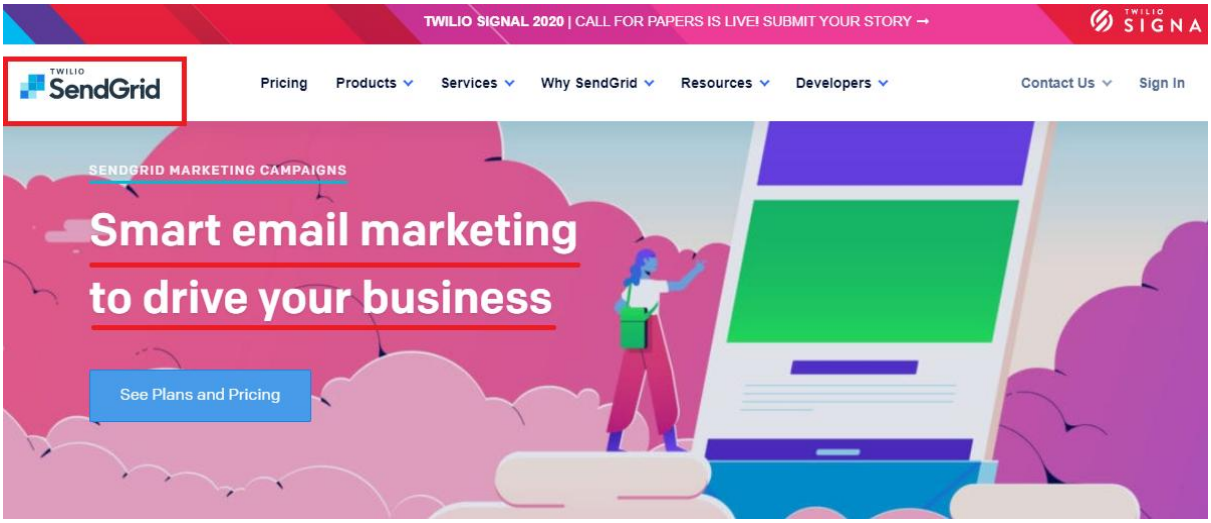
14. The inventors therefore invented systems and methods that provide the ability to create customized messages for a recipient by allowing a user to create a single message containing a common message for general distribution and comments that can only be received by selected individuals. (*Id.* at col. 3:3-7). For example, the messaging system analyzes an address list containing recipients to whom a message is addressed. (*Id.* at col. 1:59-61). If a recipient has been designated to receive a comment, the comment is decrypted and included with the common message portion before transmission to the recipient. (*Id.* at col. 1:61-64). If the recipient is not designated to receive the comment, then the messaging system transmits only the common message portion to the recipient. (*Id.* at col. 1:64-67). In another embodiment, the common message portion is transmitted to all recipients along with an icon or prompt indicating that a comment is attached to the message. (*Id.* at col. 2:1-4). When the recipient selects the icon, the message system determines if the recipient has permission to access the message and, if so, decrypts the comment for the recipient. (*Id.* at col. 2:4-10).

15. During the prosecution of the ‘965 patent, the examiner contended that the prior art disclosed methods that included creating a message that would be sent to all recipients listed and a specific portion of a message may be chosen for sending to a selected subset of recipients.

(Ex. B at 3). However, applicant argued that the claims were patentable over the prior art because none of the prior art disclosed transmitting an icon or instruction along with an encrypted comment to a subset of users and determines whether a user has selected the icon or performed the instruction to decode the encrypted comment. (Ex. C at 6). The claims were then allowed by the examiner.

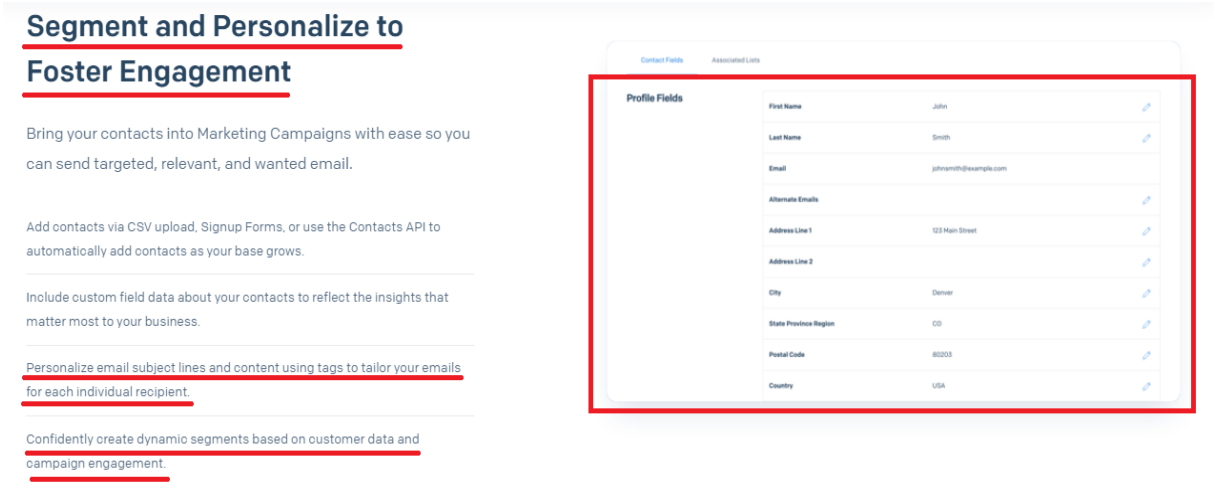
16. **Direct Infringement.** Upon information and belief, Defendant has been directly infringing at least claim 1 of the '965 patent in Delaware, and elsewhere in the United States, by performing actions comprising at least performing the method of sending an electronic method by performing the steps of the claimed invention, including but not limited to using the SendGrid email marketing platform ("Accused Instrumentality") (*e.g.*, https://sendgrid.com/solutions/email-marketing/; https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif; https://sendgrid.com/solutions/transactional-email-templates/; https://sendgrid.com/docs/ui/managing-contacts/segmenting-your-contacts/; https://sendgrid.com/docs/for-developers/sending-email/using-handlebars/#conditional-statements; https://sendgrid.com/free-templates/detail/pet-store-discount-email-template/).

17. The Accused Instrumentality practices a method of sending messages in an electronic messaging system.



(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

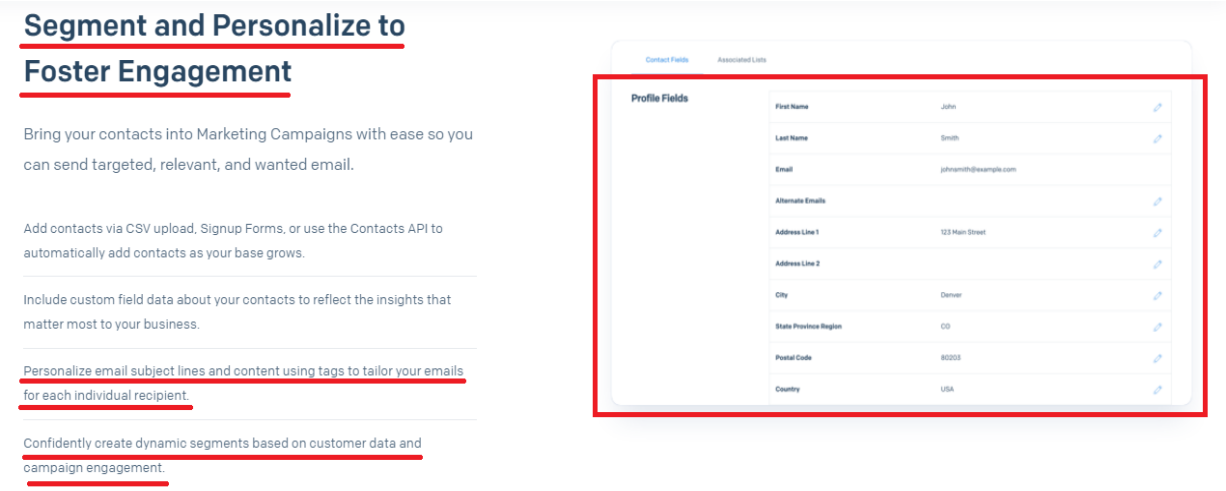
18. Upon information and belief, the Accused Instrumentality performs the step of creating an electronic message (*e.g.*, a marketing email) with a common message portion (*e.g.*, the base/default portion of a marketing email) that is to be delivered to a number of recipients (*e.g.*, customers or prospective customers on an email list).



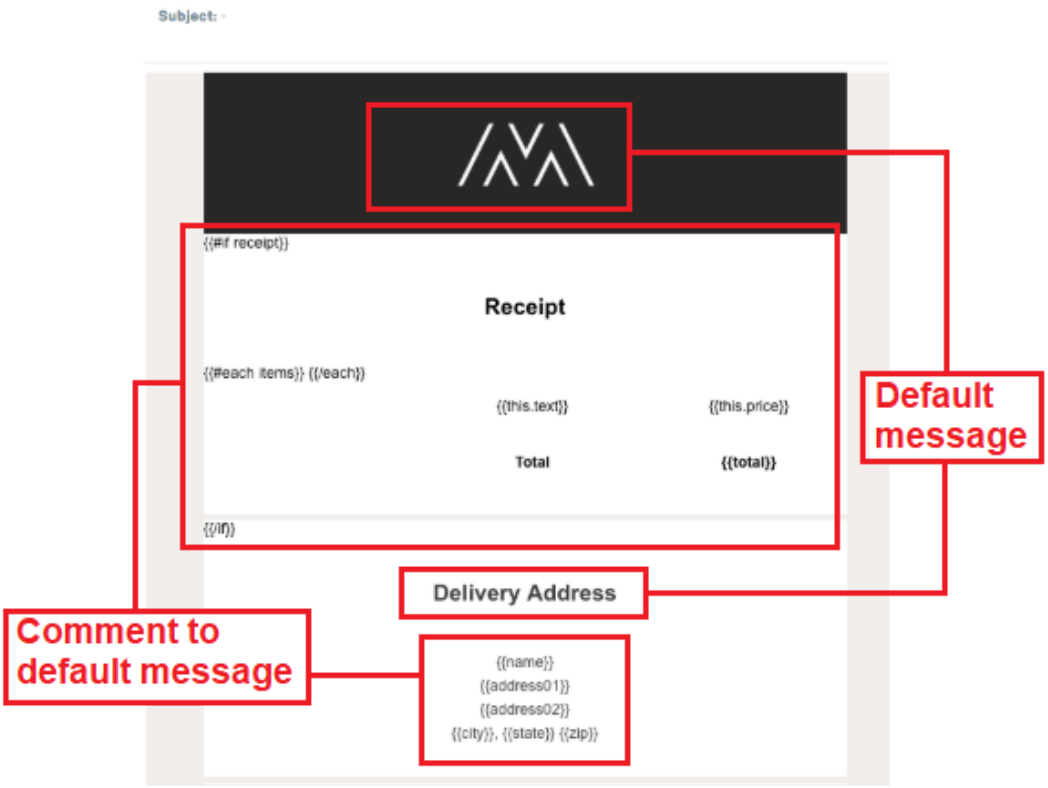
(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

19. Upon information and belief, the Accused Instrumentality performs the step of creating a comment (*e.g.*, dynamic components of the message) to said common message portion

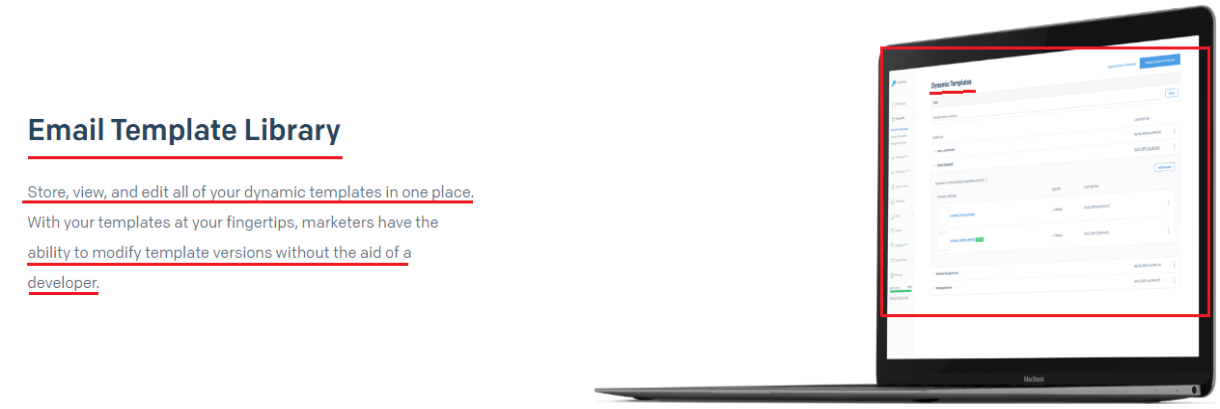
in said electronic message (*e.g.*, non-dynamic/base template message content), wherein said comment can be received only by a selected subset (*e.g.*, categorically differentiated users based on city, country, interest) of said number of recipients (*e.g.*, all email recipients selected by user).



(*e.g.*, https://sendgrid.com/solutions/email-marketing/).



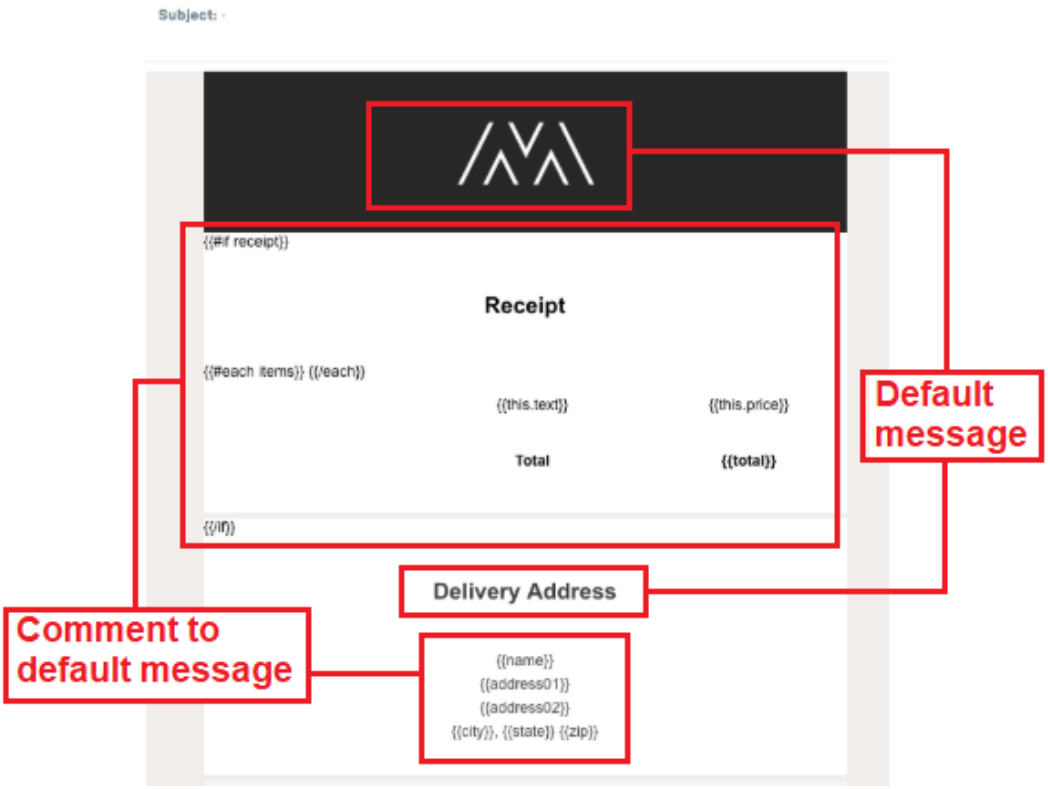
(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).



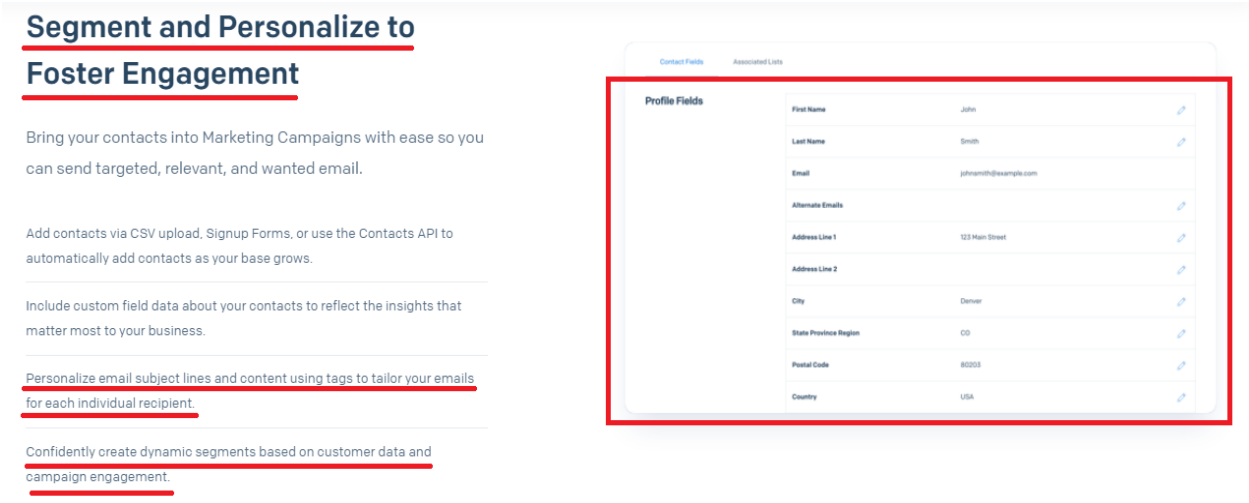
(*e.g.*, https://sendgrid.com/solutions/transactional-email-templates/).

20. Upon information and belief, the Accused Instrumentality determines the number of recipients and the selected subset (*e.g.*, categorically differentiated users based on city, country, interest) by creating a first address list (e.g., address list of all the recipients) that specifies the number of recipients (*e.g.*, all email recipients selected by user) and creating a second address (*e.g.*, address list of specific segment of the differentiated users) list that specifies the selected subset (*e.g.*, categorically differentiated users based on city, country, interest).

(*e.g.*, https://sendgrid.com/docs/ui/managing-contacts/segmenting-your-contacts/).

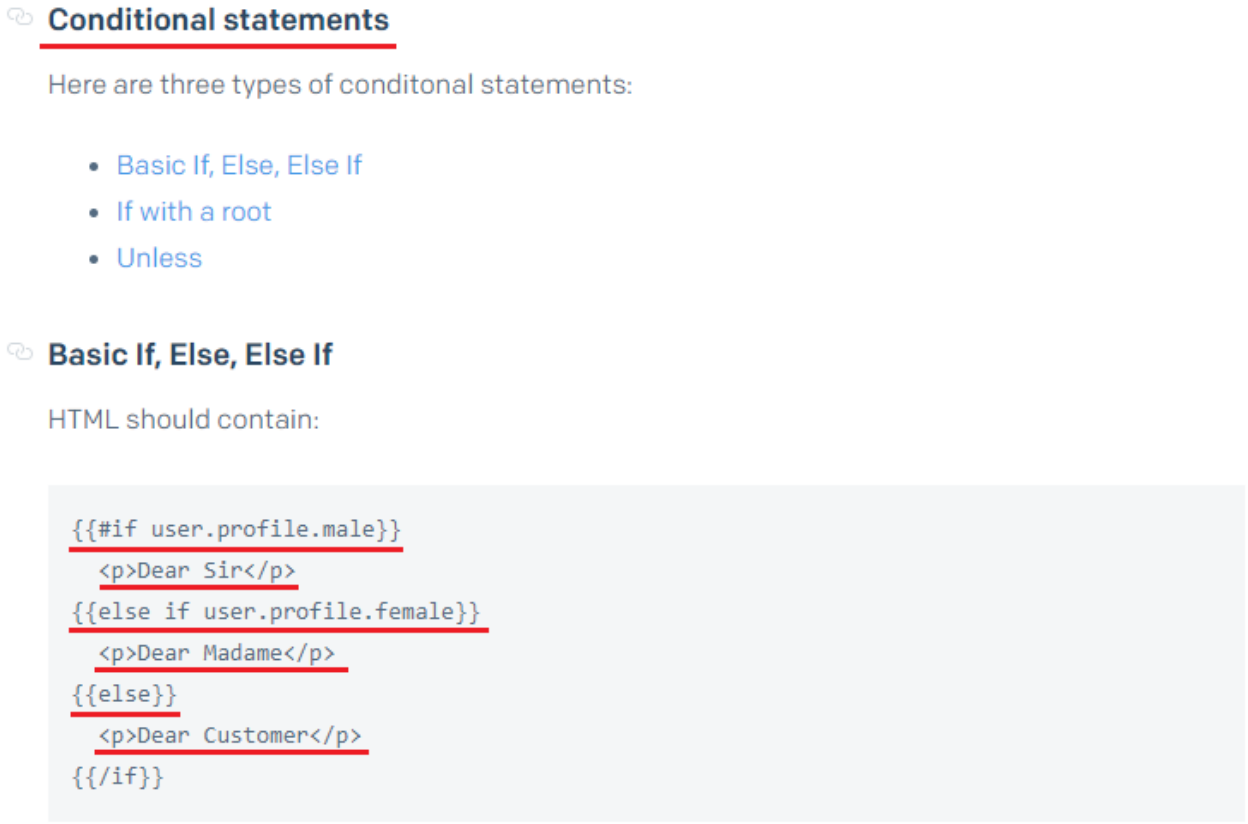


(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).



(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

21. Upon information and belief, the Accused Instrumentality performs the step of delivering the common message (*e.g.*, non-dynamic/base template message content) portion and said comment (*e.g.*, dynamic components of the message) to said number of recipients (*e.g.*, all email recipients selected by user) by encrypting said comment (*e.g.*, dynamic components of the message).



Conditional statements

Here are three types of conditonal statements:

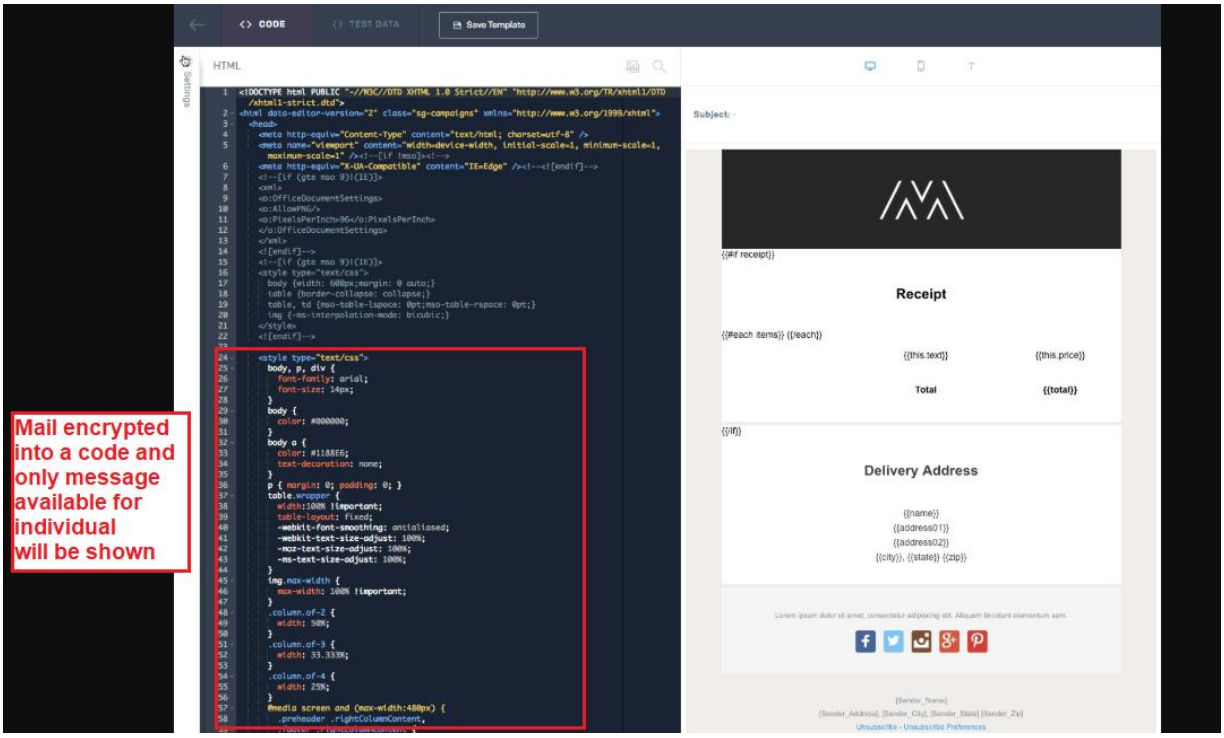
- Basic If, Else, Else If
- If with a root
- Unless

Basic If, Else, Else If

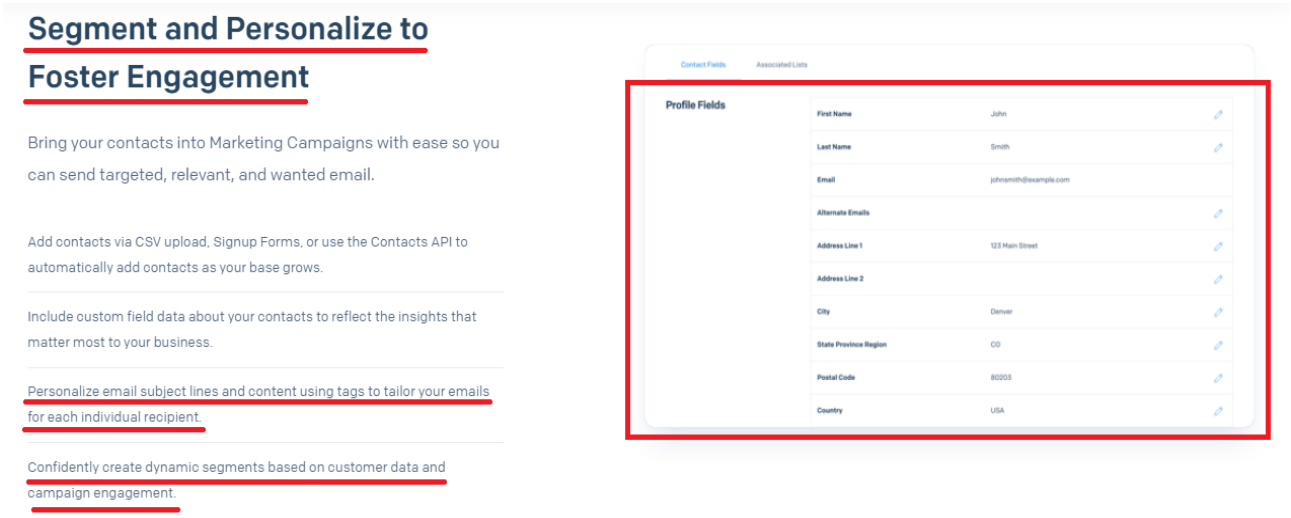
HTML should contain:

```
{{#if user.profile.male}}
  <p>Dear Sir</p>
{{else if user.profile.female}}
  <p>Dear Madame</p>
{{else}}
  <p>Dear Customer</p>
{{/if}}
```

(*e.g.*, https://sendgrid.com/docs/for-developers/sending-email/using-handlebars/#conditional-statements).



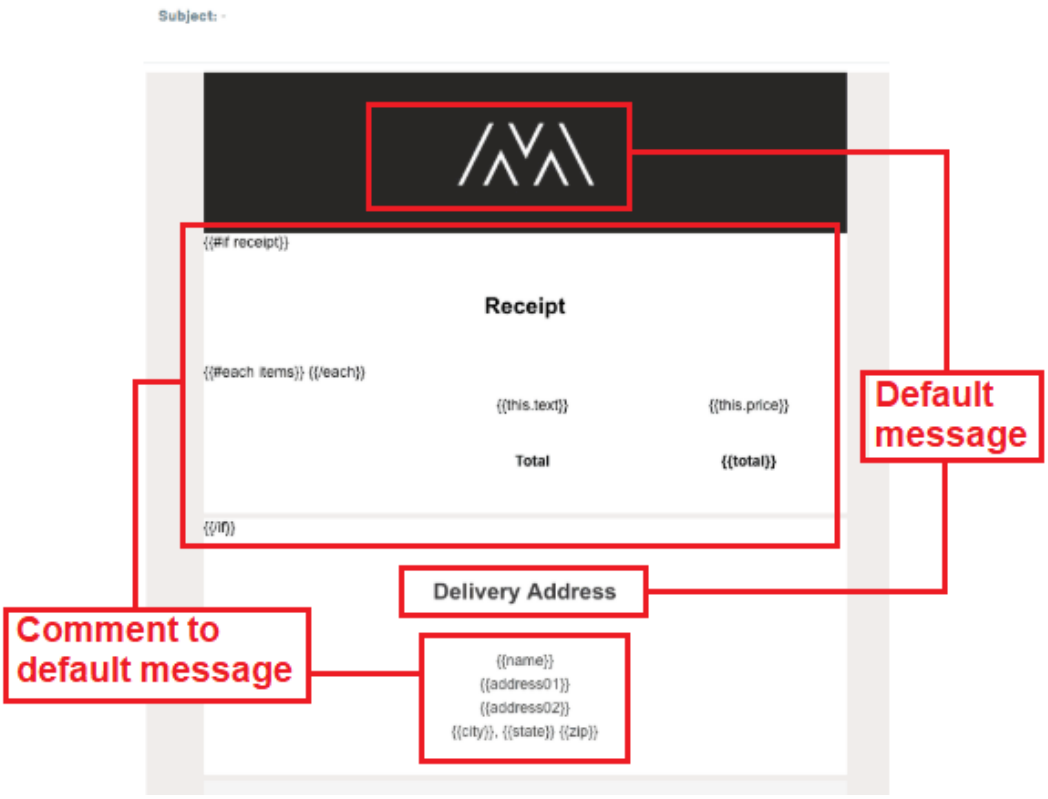
(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).



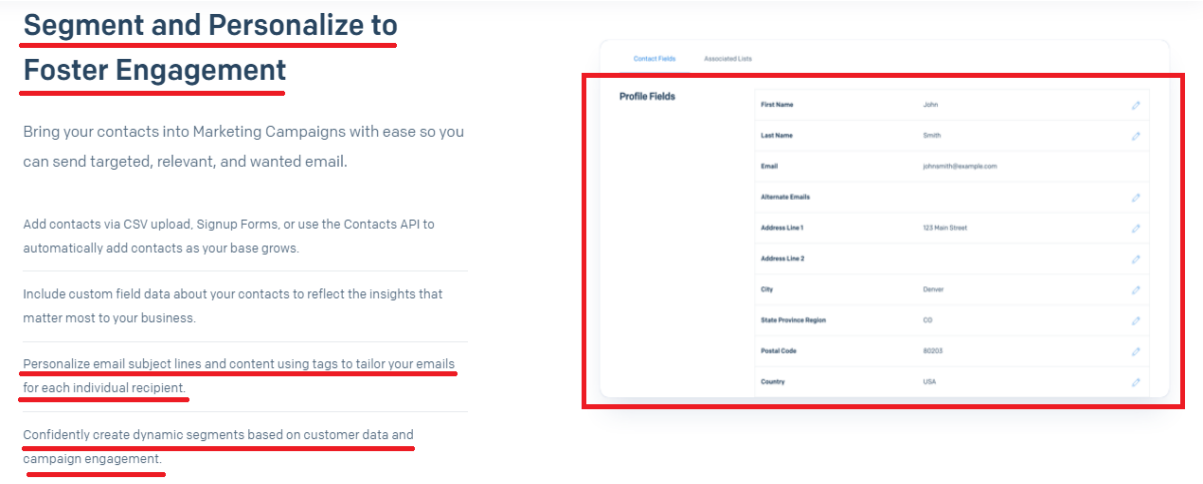
(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

22. Upon information and belief, the Accused Instrumentality performs the step of transmitting the common message (*e.g.*, non-dynamic/base template message content) portion

and said encrypted comment to said number of recipients (*e.g.*, all email recipients selected by user).



(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).



(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

Conditional statements

Here are three types of conditonal statements:

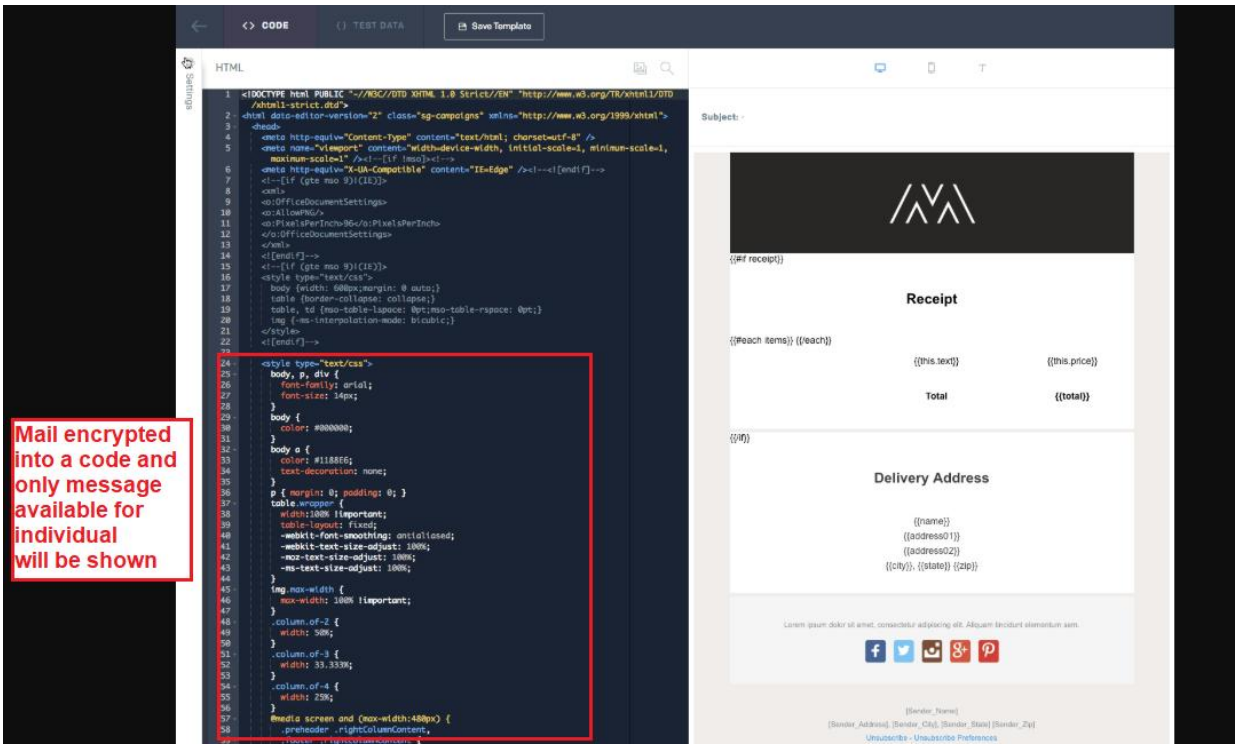
- Basic If, Else, Else If
- If with a root
- Unless

Basic If, Else, Else If

HTML should contain:

```
{{#if user.profile.male}}
  <p>Dear Sir</p>
{{else if user.profile.female}}
  <p>Dear Madame</p>
{{else}}
  <p>Dear Customer</p>
{{/if}}
```

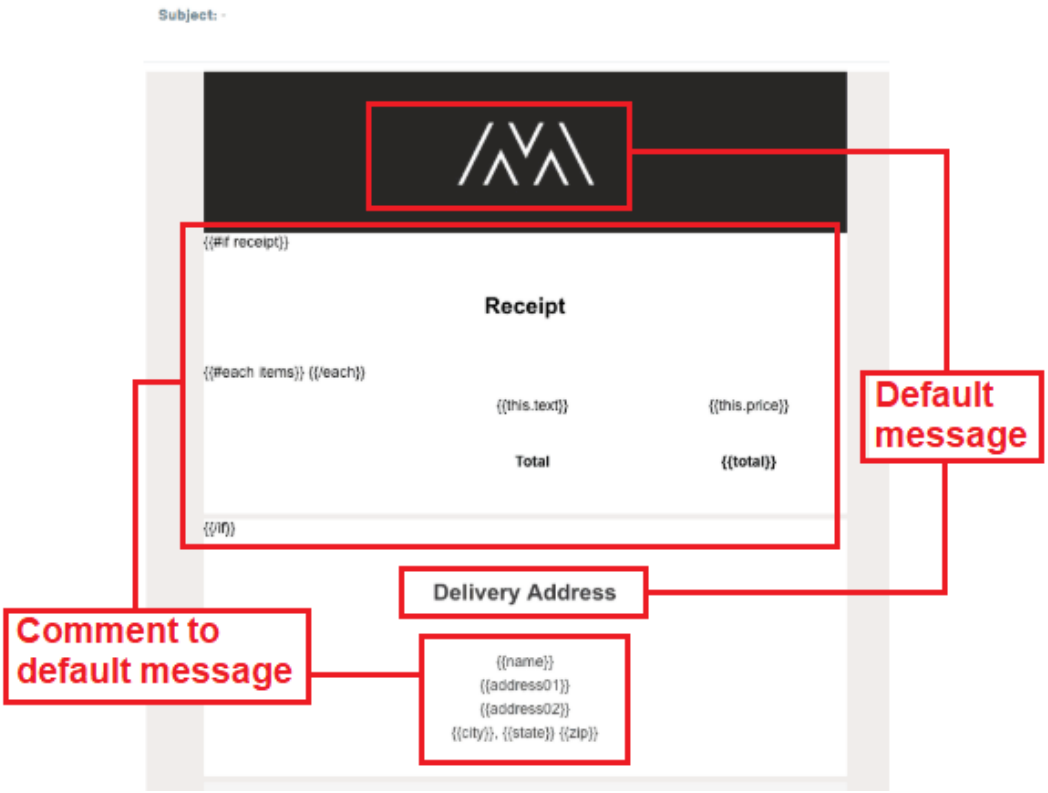
(*e.g.*, https://sendgrid.com/docs/for-developers/sending-email/using-handlebars/#conditional-statements).



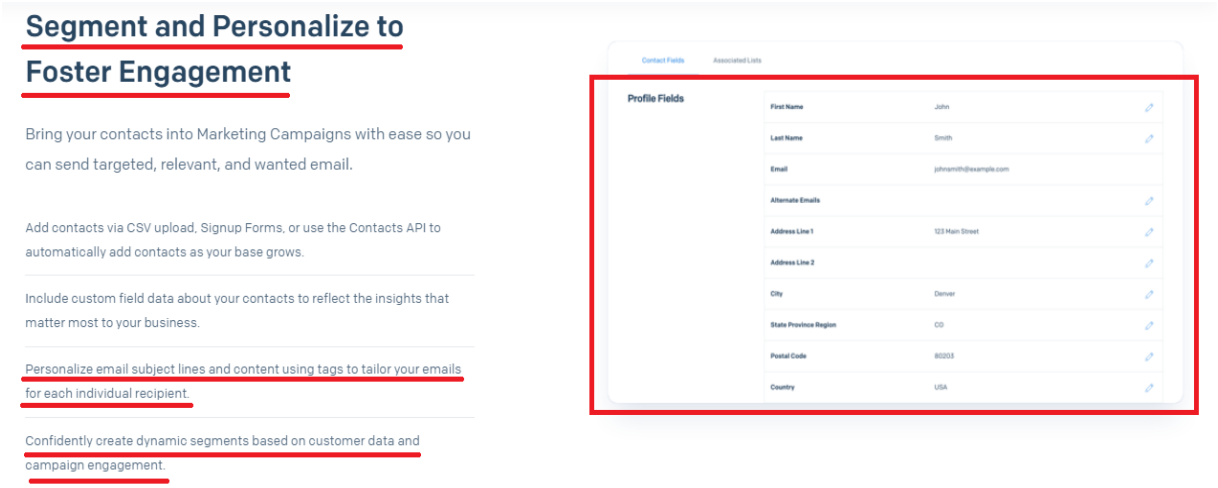
(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).

(*e.g.*, https://sendgrid.com/docs/ui/managing-contacts/segmenting-your-contacts/).

23. Upon information and belief, the Accused Instrumentality performs the step of determining whether a particular recipient is allowed to decode (*e.g.*, determines whether a user is allowed to use a discount code and access a link to the merchant website) said encrypted comment by transmitting an icon or instruction (*e.g.*, a button or a clickable link for a promo code that is a dynamic portion of the mail) with said common message portion (*e.g.*, non-dynamic/base template message content) and said encrypted comment and determining if said particular recipient has selected the icon or performed the instruction (*e.g.*, a button or a clickable link for a promo code that is a dynamic portion of the mail) and if so, determining if said particular recipient is on said second address list (*e.g.*, address list of specific segment of the differentiated users) of said number of recipients selected to review said comment (*e.g.*, dynamic components of the message).



(*e.g.*, https://sendgrid.com/wp-content/uploads/2018/07/Dynamic_Template-1.gif).



(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

Conditional statements

Here are three types of conditonal statements:

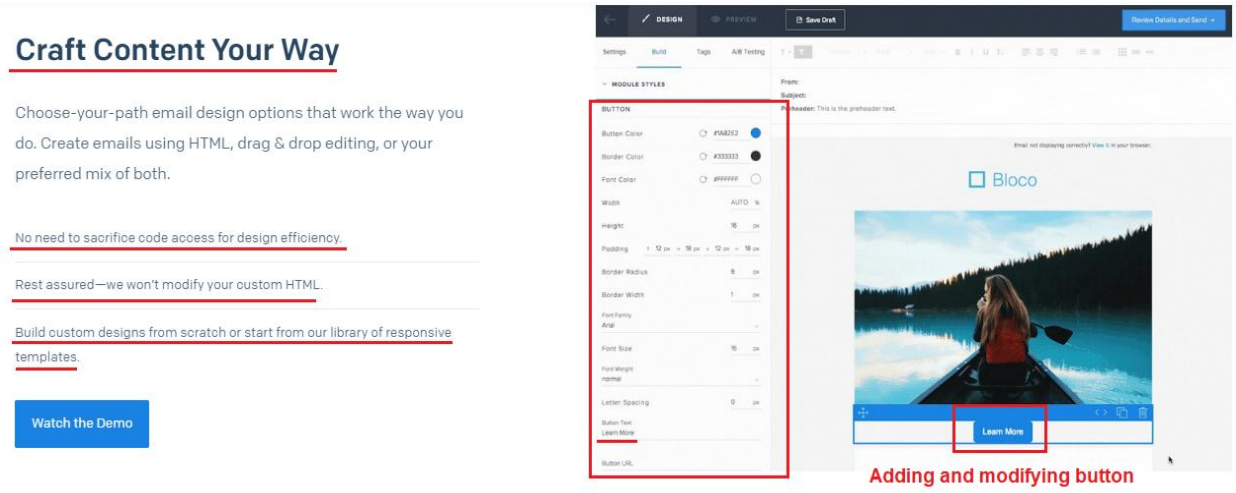
- Basic If, Else, Else If
- If with a root
- Unless

Basic If, Else, Else If

HTML should contain:

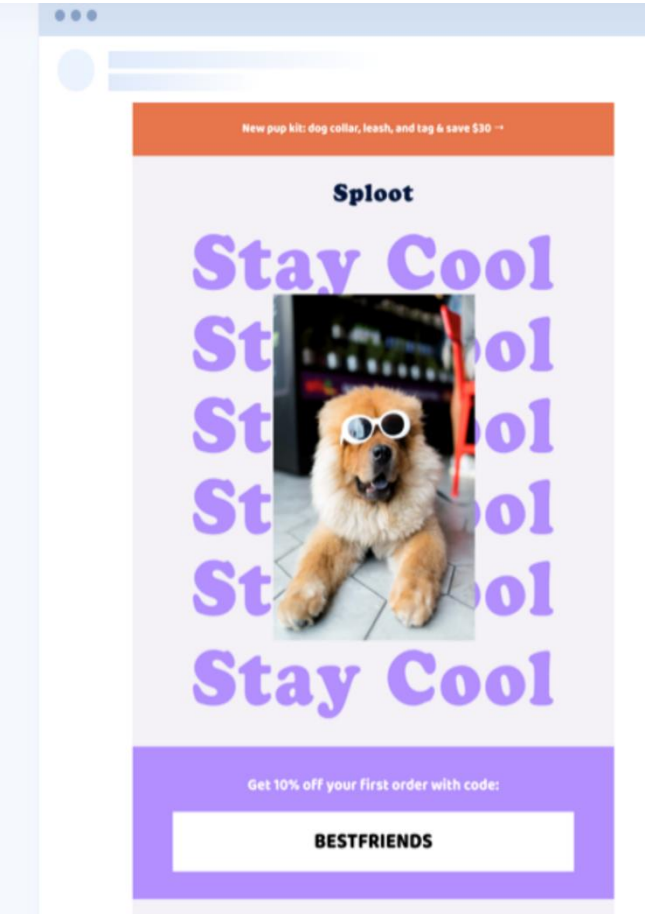
```
{{#if user.profile.male}}
  <p>Dear Sir</p>
{{else if user.profile.female}}
  <p>Dear Madame</p>
{{else}}
  <p>Dear Customer</p>
{{/if}}
```

(*e.g.*, https://sendgrid.com/docs/for-developers/sending-email/using-handlebars/#conditional-statements).

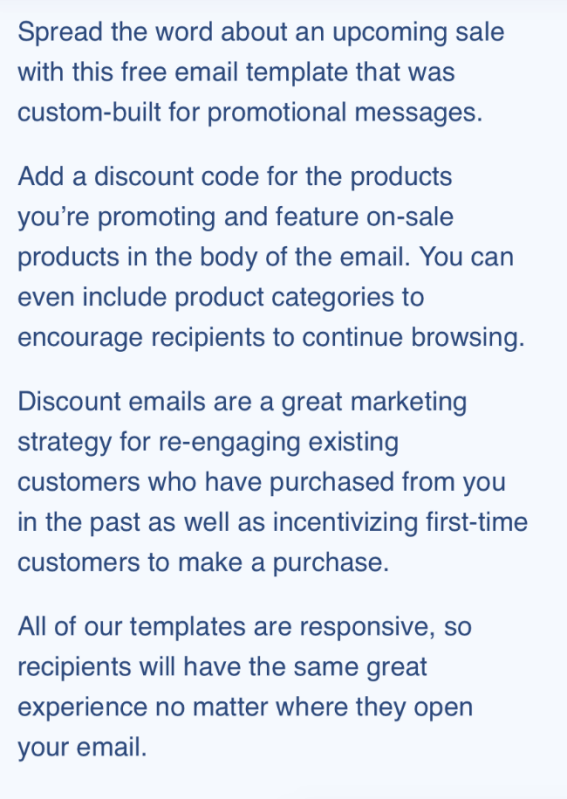


(*e.g.*, https://sendgrid.com/solutions/email-marketing/).

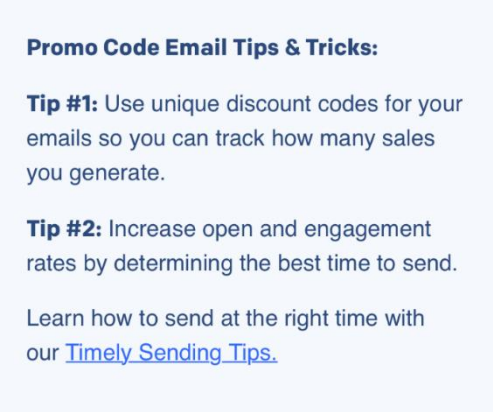
(*e.g.*, https://sendgrid.com/docs/ui/managing-contacts/segmenting-your-contacts/).



(*e.g.*, https://sendgrid.com/free-templates/detail/pet-store-discount-email-template/).



(*e.g.*, https://sendgrid.com/free-templates/detail/pet-store-discount-email-template/).



(*e.g.*, https://sendgrid.com/free-templates/detail/pet-store-discount-email-template/).

24. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for such Defendant's infringement of the '965 patent, *i.e.*, in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology,

together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

25. On information and belief, Defendant has had at least constructive notice of the '965 patent by operation of law and marking requirements have been complied with.

IV. JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

a. Judgment that one or more claims of United States Patent No. 6,636,965 have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;

d. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;

e. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

h. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

February 23, 2020

CHONG LAW FIRM

/s/ Jimmy Chong

Jimmy Chong (#4839)
2961 Centerville Road, Suite 350
Wilmington, DE 19808
Telephone: (302) 999-9480
Facsimile: (877) 796-4627
Email: chong@chonglawfirm.com

Attorneys for Plaintiff Pivital IP LLC

OF COUNSEL:

David R. Bennett
Direction IP Law
P.O. Box 14184
Chicago, IL 60614-0184
(312) 291-1667
dbennett@directionip.com